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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 FREDERICK BANKS,

11 Plaintiff,

12 v.

13 MIKE POMPEO, et al.,

14 Defendant.

CASE NO. 3:17-cv-05669-RBL-DWC

REPORT AND RECOMMENDATION

Noting Date: November 3, 2017

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16 Plaintiff Frederick Banks, allegedly representing the Estate of Kurt Cobain, filed the  
17 current action seeking a disclosure of Foreign Intelligence Surveillance Act ("FISA")  
18 surveillance pursuant to 50 U.S.C. § 1806. However, none of the named Defendants reside in the  
19 Western District of Washington and Plaintiff has not alleged any wrongdoing in the Western  
20 District of Washington. Therefore, the Court recommends the action be dismissed for improper  
21 venue.

22 **BACKGROUND**

23 Plaintiff is currently incarcerated in the Northeast Ohio Correctional Center. Dkt. 1-6. He  
24 has filed a Motion to Proceed *In Forma Pauperis*, a Motion for Appointment of Counsel, and a

1 Motion to Disclose Electronic Surveillance. Dkt. 1. He claims to be filing the suit on behalf of  
2 the Estate of Kurt Cobain. Dkt. 1-1 at 1. He names as Defendants Mike Pompeo in his capacity  
3 as director of the Central Intelligence Agency, as well as the directors of the Federal Bureau of  
4 Investigation, the Department of Homeland Security, those agencies themselves, and the United  
5 States. *Id.* He alleges that Cobain was placed under illegal electronic surveillance by Defendants  
6 and, pursuant to FISA , requests copies of all electronic surveillance, transcripts, testimony, and  
7 other materials gained from the alleged illegal surveillance of Cobain. *Id.* at 1-3.

## 8 DISCUSSION

9 Plaintiff names numerous heads of federal agencies and the United States itself as  
10 Defendants in this action, but no Defendants reside in the State of Washington. Venue may be  
11 raised by the Court *sua sponte* where the defendant has not filed a responsive pleading and the  
12 time for doing so has not run. *See Costlow v. Weeks*, 790 F.2d 1486, 1488 (9th Cir. 1986). When  
13 jurisdiction is not founded solely on diversity, venue is proper in (1) the district in which any  
14 defendant resides, if all of the defendants reside in the same state; (2) the district in which a  
15 substantial part of the events or omissions giving rise to the claim occurred, or a substantial part  
16 of the property that is the subject of the action is situated; or (3) a judicial district in which any  
17 defendant may be found, if there is no district in which the action may otherwise be brought. *See*  
18 28 U.S.C. § 1391(b). When venue is improper, the district court has the discretion to either  
19 dismiss the case or transfer it “in the interest of justice.” *See* 28 U.S.C. § 1406(a).

20 Here, Plaintiff has made no allegations to demonstrate venue is appropriate. Plaintiff has  
21 named the directors of various federal agencies as Defendants. None of the Defendants reside in  
22 the Western District of Washington. Plaintiff has also not shown that any of the alleged  
23 wrongdoing occurred in the Western District of Washington. Because of this, the Western  
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1 District of Washington is not the appropriate venue to bring this suit. Further, the Court has  
2 reviewed the Complaint and finds Plaintiff has not alleged sufficient facts to state a claim.  
3 Therefore, the Court finds the interests of justice do not require that the case be transferred to a  
4 more appropriate district. The Court recommends that the action be dismissed.

### 5 CONCLUSIONS

6 The Court finds that venue is improper in this action and the interests of justice do not  
7 require transferring the case. Therefore, the Court recommends that the action be dismissed and  
8 all outstanding motions be denied as moot.

9 Pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), the parties shall have  
10 fourteen (14) days from service of this Report to file written objections. *See also* Fed. R. Civ. P.  
11 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo*  
12 review by the district judge. *See* 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit  
13 imposed by Fed. R. Civ. P. 72(b), the clerk is directed to set the matter for consideration on  
14 November 3, 2017, as noted in the caption.

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16 Dated this 19th day of October, 2017.

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19 David W. Christel  
20 United States Magistrate Judge  
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